IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION.

CRIMINAL APPLICATION No.3213 of 2007.

Sudam D. Kudekar ..Applicant.

Vs.

The State of Maharashtra ..Respondent.

Mr C. K. Pendse i/b Ms Jyoti M. Sawant, Advocates for the applicants.

Mr S.S. Pednekar, A.P.P for the State-Respondent No.1.

Mr Vinod Wagh, Advocate for the Respondent No.2.

CORAM: V.C. DAGA,J.
DATED: 23RD OCTOBER, 2007.

P.C.:-

1. Heard learned counsel for the applicant and learned APP for the State and the learned counsel for the complainant-respondent no.2.

2. Perused application and the material available on record.

3. The applicant is seeking anticipatory bail in C.R. No. 331 of 2007 registered with Ghatkopar Police Station, Mumbai for the offence punishable under Section 498-A, 306 of the I.P.C.

4. The applicant was granted anticipatory

bail by the Additional Sessions Judge vide order dated 7.9.2007 passed in Bail Application No. 115 of 2007. The said order remained in force till filing of the charge sheet.

5. It further appears that application for cancellation of bail, bearing No. 559 of 2007, was heard and decided by on 27.9.2007. The said application for cancellation of anticipatory bail was partly allowed directing to the present applicant to produce his son accused Prakash Sudam Kudekar before the Court within 48 hours. Failure on the part of the present applicant was to result in automatic cancellation of anticipatory bail.

6. The present applicant could not produce the said Prakash Sudam Kudekar within 48 hours. With the result, said operation of order dated 27.9.2007 operated and resulted in automatic in cancellation of anticipatory bail.

7. Being aggrieved with the aforesaid order, the applicant is before this Court seeking to invoke powers of this Court under Section 438 of the Cr.P.C. to seek anticipatory bail and/or restoration of the order dated 7.9.2007; whereunder,

anticipatory bail was granted. The contention is that the applicant could not produce accused Prakash Sudam Kudekar within 48 hours for want of his whereabouts and that he was not responsible for his disappearance. He, thus, submits that reason, for which anticipatory bail was cancelled, was untenable in the eye of law. He further sumits that during pendency of this application Prakash Sudam Kudekar has returned home. He appeared before police. His statement was recorded by police; wherein, he has stated that quarrels in the family members had created tension for his mind. Due to derailed mental condition he had left and kept himself away from home.

8. Taking into account the fact of return of Prakash Sudam Kudekar, impugned order passed for cancellation of bail in Application No. 559 of 2007 cannot survive. Thus, the same is set aside. The order passed by Additional Sessions Judge granting pre-arrest bail in Anticipatory Bail Application No. 1152 of 2007 is restored.

9. In the result, application accordingly stands allowed in terms of this order.

JUDGE.